IN THE HIGH COURT OF JUDICATURE AT BOBBY
APPELLATE SIDE JURISDICTION
CRIMINAL APPEAL NO.787 OF 1997
(By the accused against conviction)

1. Smt. Vimal Anna Shinde
2. Balasaheb Anna Shinde
Both residing at Arjunwad,
Tal. Shirol, District - Kolhapur ...Appellant

Vs

State of Maharashtra. ...Respondent.

Mr. P.D. Dalvi, advocate for the appellants.

Mr. A.M. Shringarpure, APP for the respondent - State

ALONG WITH
CRIMINAL APPEAL NO.651 OF 1998
(By the State against acquittal)

State of Maharashtra ...Appellant.

V/s

1. Smt. Vimal Anna Shinde
2. Balasaheb Anna Shinde
All R/o. Arjunwad Tal.
Shirol, District - Kolhapur. ...Respondents.

Mr. A.M. Shringarpure, APP for the appellant - State

Mr. P.D. Dalvi, advocate for respondents.

CORAM : V.G.PALSHIKAR &
R.C.CHAVAN, JJ

DATED : 7TH JULY, 2005

COMMON ORAL JUDGMENT : (Per R.C.Chavan, J)

1. This common judgment disposes of Criminal Appeal No.787 of 1997 filed by the accused against their conviction for offence punishable under section

498A I.P.C. and Criminal Appeal No.651 of 1998 filed by the State against acquittal of the accused, for offences punishable under sections 302 and 201 I.P.C.

2. Facts which led to the prosecution of the accused are as under:-

3. The accused No.1 Vimal Anna Shinde is mother of accused No.2-Balasaheb, who was married to victim Rani on 24th April, 1992. For about first three months, relations of the parties were normal. Thereafter, when Rani visited the house of her father Sahadev, she disclosed that accused had demanded a sum of Rs.4,000/- from her father Sahadev. Inability of Sahadev to comply with the said demand led to harassment of Rani. Therefore, for quite some time, Rani stayed at her parental home and she ultimately returned back to the matrimonial home on 2nd January, 1993. Rani had also attempted to commit suicide by jumping into the river but was prevented from doing so by passers-by.

4. On 12th February, 1993, at about 6.30 p.m., Rani was found dead in the kitchen of her house with considerable burn injuries all over the body. Accused No.2 informed the police that when he and his mother were not in the house, Rani had sustained burns

possibly as a result of fire while cooking the food and an accidental death was registered. After conducting inquest, dead body was sent for post-mortem examination. The investigation took a different turn when the medical officer found that Rani had died due to Asphyxia due to throttling and then her body was burnt. On a report by father of Rani, offences of murder and cruelty were registered and investigation commenced. Police arrested the accused persons, recorded statements of the witnesses, took other necessary steps in the investigation, sent the articles seized to the Forensic Science Laboratory, and on completion of investigation, sent the charge sheet to the learned Judicial Magistrate, First Class, Jaisingpur, who committed the case to the Court of Sessions at Kolhapur, on finding that the accused had committed offences triable exclusively by the Court of Sessions.

5. Upon consideration of material before him, the learned Additional Sessions Judge, Kolhapur, charged the accused of offences punishable under Sections 302, 201 and 498A read with Section 34 of Indian Penal Code. The accused pleaded not guilty to the said charges levelled against them and claimed to be tried. The accused denied that they had ever subjected to victim with ill-treatment and also stated that they

had nothing to do with the death of victim. In view of these pleas, they were put on trial.

6. The prosecution examined as many as 16 witnesses to bring home the guilt of the accused. Upon consideration of the evidence tendered before him, the learned Additional Sessions Judge convicted the accused of offences punishable under Section 498A read with 34 of Penal Code but proceeded to acquit the accused for offences punishable under Sections 302 and 201 read with Section 34 of Penal Code. Aggrieved thereby, the accused as well as the State have appealed.

7. We have heard both learned Additional Public Prosecutor and counsel for accused in support of their respective appeals as also to oppose the appeals filed by adversaries.

8. With the help of the learned Counsel, we have gone through the entire evidence tendered before the Court. It may be seen that evidence of ill-treatment of victim Rani was to come from P.W.1-Prabhavati who is not only a neighbour but also acquaintance of the accused. She stated that she used to accompany the accused to search for bride for accused No.2. She did not state about any demand of Rs 4,000/- being made by

the accused with the victim. She also did not speak of any ill-treatment and contradicted concerned portions of her police statement. She stated that relations between the victim and the accused were cordial.

9. P.W. 6, victim's father Sahadev, proved his report at Exhibit-24. He stated that the accused had made a demand of Rs 4,000/- which his daughter conveyed to him a few months after the marriage. He expressed inability to pay the amount and, therefore, harassment of his daughter commenced. His daughter had to stay at parental home for quite some time and when an attempt was made to secure her entry in the matrimonial home, the accused opposed it. Only with the help of mediators could the victim be re-admitted to the matrimonial home but, soon thereafter, she met with her death.

10. P.W. 9 - Bandu, maternal uncle of the victim also states about harassment of the accused for non-payment of Rs 4,000/-. It seems that Rani had requested him to fulfil the demand but he too expressed his inability. Thus, we have evidence of P.W. 6 Sahadev and P.W. 9 - Bandu who state about demand of Rs 4,000/- by accused which remained unfulfilled and which was the cause of harassment to

the victim. It is true that had the prosecution examined any of the mediators with whose help re-admission of the victim in matrimonial home was secured, it would have bolstered up the case of the demand of money by the accused, yet, as the discussion to follow, would show the evidence of these two witnesses on the count of harassment does not appear illusory or unworthy of belief.

11. P.W. 7 - Gajanan and P.W. 8 - Parasharam were residing in the same neighbourhood of the accused. Both of them state that they saw the victim Rani going towards river to jump therein to commit suicide. They prevented her from doing so and, at that time, learnt from Rani about her harassment. The cross-examination of both these witnesses does not disclose any thing to disbelieve their uninterested word about Rani's conveying to them that she was harassed by the accused persons. This lends corroboration to the word of P.W. 6 - Sahadev and P.W. 9 - Bandu, the father and maternal uncle of the victim that the victim was harassed. This evidence has been rightly accepted by the learned trial judge in concluding that the prosecution had proved the ill-treatment of the victim at the hands of the accused persons.

12. This takes us to the question of complicity of the accused in victim's murder and causing evidence of murder to disappear. P.W. 1 - Prabhavati had attested Inquest Panchnama at Exhibit-14. However, the Inquest Panchnama in itself does not give any clue about victim's death on account of asphyxia or strangulation. The notes of post-mortem examination proved by P.W. 14 - Dr. Suman Patil show that the victim was first strangulated to death and then her body was sought to be burnt to make it appear that she died of burns. There is no reason to disbelieve the word of Dr. Suman Patil that there was thumb mark on the right side of neck and two finger marks on the left side. She has also observed that Cornu of hyoid bone is fractured on left side and right side. She was positive that the burn injuries were post-mortem and had not been inflicted before death of the victim. In view of this, it has to be inferred that the victim Rani was first strangulated and then her body was sought to be burnt in her house.

13. The only question is, whether the authorship of this ghastly act can be attributed to the accused persons. It is unfortunate that the prosecution did not tender any evidence as to how this dead body came to be discovered in the house of the accused. It seems that when the accused No.2 came home in the

evening, he saw a crowd gathered in front of his house. He went inside the house and found his wife Rani lying dead. According to accused No.2, he had left for work at about 7.00 a.m. in the morning and his mother had gone to another field after completing household work. He stated that his wife also had gone to work in somebody's field. Thus, essentially, the story of accused No.2 is that neither he, nor his mother were at their house and he learnt the unfortunate event only when he returned home at about 7.30 p.m. It was necessary to check up this story and to show as to how the dead body or event of death came to be discovered. It is not that the house of accused is at an isolated place. According to the evidence of P.W. 1 - Prabhavati, she lives in the neighbourhood and so are P.W. 7 Gajanan and P.W.8 - Parasharam. It is inconceivable that with smoke emanating from the house or person's body burning in the house, nobody in the vicinity would notice. This glaring inadequacy in the prosecution evidence cannot be lightly overlooked.

14. There is no eye witness to the incident either of throttling or setting the said body on fire. There is nobody who has seen the accused leaving the house surreptiously after the incident. The version of accused No.2 at Exhibit-31 has already been recounted. No attempt was made to falsify this version.

15. Only evidence by which prosecution sought to connect the accused to the crime is in respect of discovery of Canister from the house of P.W. 11 - Kamlakar at the instance of accused No.1. P.W. 4 - Rajendra is a panch who has proved memorandum at Exhibit 19 and resultant seizure of Canister at Exhibit-20. Curiously, in his evidence, he does not at all state about any disclosure made by accused No.1 regarding concealment of Canister. He states that he signed the documents in the Police Station. In these circumstances, evidence about discovery which, even otherwise, is a very weak piece of evidence, looses its significance.

16. Evidence of P.W. 11 - Kamlakar is curiouser still. He states that accused No.1 kept Canister at his house. It was seized about three days after the incident. In cross-examination, he stated that on the incidental day, he was not at his house from 4.30 p.m. to 10.00 p.m. The question would arise as to when was the Can kept. He states that he did not see when it was kept at his house. Thus, the evidence which could have connected the accused No.1 to the crime vanishes. Incidentally, it was suggested to this witness that, after the incident, people were saying that he was instrumental for unfortunate death and, therefore, he

had ran away. He denied the suggestion, as well as the other suggestion that he had an evil eye over the victim. All the same, the fact that he had cheek to state about concealment of canister at his house when he had not even seen when the Can was kept, casts doubt on his evidence. If the Can was indeed kept at his house after ghastly incident of victim having been burnt, it would have been appropriate for him to make disclosure to the police that such Can was kept. The entire evidence about disclosure by accused No.1 about concealment of Can at the house of P.W. 11 - Kamlakar is suspicious and casts shadow of doubt on the story sought to be developed by the prosecution to indicate involvement of the accused in death of Rani.

17. In view of this, the learned trial judge rightly concluded that there was no evidence about complicity of the two accused persons in death of Rani though ill-treatment to the victim much prior to the death had been proved. Therefore, he rightly convicted the accused persons of the offence punishable under section 498A and acquitted them of the offences punishable under sections 302 and 201 of the Indian Penal Code.

18. As for sentence, it was submitted by the learned Counsel for the appellant in appeal No.787 of 1997

that the accused were in custody for about 8 months and, therefore, period of imprisonment may be reduced to that already undergone. We are afraid that this cannot be done. The sentence imposed by the learned Additional Sessions Judge is, in the circumstances, sufficiently lenient. Therefore, we do not see any reason to interfere with the sentence of rigorous imprisonment of two years imposed upon both the appellants in Appeal No.787 of 1997.

19. In the result, both the appeals are dismissed. The accused in Criminal Appeal No.787 of 1997 are on bail. They should surrender to their bail forthwith.

(V.G. PALSHIKAR, J.)

(R.C. CHAVAN, J.)